

FEB 23 2006

PATENT

Docket No. 206.00300102

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Baumann et al. ) Group Art Unit: 3671  
Serial No.: 10/798,616 ) Examiner: Arpad F. Kovacs  
Confirmation No.: 6205 )  
Filed: March 11, 2004 )  
For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY  
LAWN MOWER

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Docket No.206.0030102IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s):	Baumann et al.	)	Group Art Unit:	3671
		)		
Serial No.:	10/798,616	)	Examiner:	Arpad F. Kovacs
Confirmation No.:	6205	)		
		)		
Filed:	March 11, 2004	)		
		)		
For:	DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER			

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellants hereby request a Panel Review of the final rejection, dated 23 November, 2005, in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

Status of the Claims

The pending claims are claims 14-24 of which all claims stand rejected.

Review is requested for the following reasons:Rejection of claims 14-23

Claims 14-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Scag (U.S. Patent No. 4,146,105). This rejection was originally made in the October 26, 2004 non-final Office Action, but was withdrawn in view of Appellants' subsequent response made without amendment. The rejection reappeared in the 9 August 2005 non-final Office Action.

Independent claim 14 recites, *inter alia*, "a duct of substantially rectangular cross section extending through the rear enclosure member between the cutting chamber and the rectangular

**Pre-Appeal Brief Request For Review**

Page 2 of 4

Serial No.: 10/798,616

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

rear discharge port, the duct defining a duct axis that is substantially parallel to a longitudinal axis of the mower."

Scag discloses a drive system for a power lawn mower wherein the mower includes a mower deck 12 (see Figure 3). However, Scag fails to teach each and every element of claim 14. For example, while the mower deck 12 includes a chute 31 (see Figure 3), the chute 31 of Scag clearly fails to define an axis that is "substantially parallel to a longitudinal axis of the mower." Rather, an axis of the chute 31 extends upwardly and to one side of the mower as evident in Figure 3.

Nonetheless, in the "Response to Arguments" section, the 9 August 2005 Office Action states that

'substantially' could be interpreted slightly upwardly as shown by Scag, since it does not state 'exactly' or any recitation that limits to 'parallel' only interpretation. Secondly, even if Scag's chute extends upwardly, it is still parallel to a longitudinal axis of the mower.

9 August 2005 *Office Action*, page 5, paragraph 5.

(These arguments are generally repeated at pages 3-4 and 6 of the 23 November 2005 final Office Action.) In support of the Office's position, the Examiner provided a figure at page 6 of the 9 August 2005 Office Action illustrating an "arbitrary longitudinal axis," a figure also provided at page 4 of in the 23 November 2005 final Office Action.

As identified at page 3 of Appellant's Response to the 9 August 2005 Office Action (dated 8 November 2005), the phrase "substantially parallel," as one of skill in the art would understand it in view of the specification, is to define the identified duct axis (see, e.g., axis 166 in Figure 5 of Appellant's specification) as being essentially parallel to the longitudinal axis of the mower. Such broadening modifiers as "substantially" are a long-accepted practice and are often-used in claim drafting for a variety of reasons, e.g., to avoid reliance on the doctrine of equivalents. There is no evidence to support the Office's position that "substantially" could reasonably be interpreted in a manner suggested by the Office Action.

## Pre-Appeal Brief Request For Review

Page 3 of 4

Serial No.: 10/798,616

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

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With regard to the Office Action's second comment, a chute that extends upwardly and/or to the side of the mower (as the chute of Scag does), is clearly not substantially parallel to a longitudinal axis of the Scag mower as would be required to anticipate claim 14.

Appellants note that the term "longitudinal," as commonly defined, means "of longitude or length" or "lengthwise." See, e.g., Random House Webster's Dictionary, Third Edition, page 424 (1998). There is no reasonable basis identified to assert that the arbitrary axis that the Office Action identifies in its own figure could be considered a longitudinal axis of the Scag mower.

Moreover, even if such an assertion could be made, Appellants' specification clearly describes the longitudinal axis of the mower (see, e.g., Page 16, Ln. 12-13, and reference numeral 170 in Figure 2 of Appellants' application), and describes the duct axis 166 (see, e.g., Figure 5) as being "substantially parallel" to the longitudinal axis 170 (*Id.* at Page 16, Ln. 12-13).

Accordingly, Appellants submit that Scag clearly fails to teach each and every element of independent claim 14 and, thus, fails to satisfy the objective criteria required to anticipate that claim. It is further submitted that claims 15-23 are novel not only in view of their dependence, but also because of the particular subject matter recited therein. Review and withdrawal of this rejection are respectfully requested.

Rejection of Claim 24

Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Scag in view of Sugden et al. (U.S. Patent No. 6,192,666). Appellants traverse this rejection for at least the following reasons.

As set forth above in the response to the 35 U.S.C. § 102(b) rejection of claims 14-23 provided in Appellants' 8 November 2005 Response (and in the paragraphs above), Scag fails to disclose, or even suggest, each and every recitation found in the claims (e.g., fails to disclose, or suggest, a duct defining a duct axis that is substantially parallel to a longitudinal axis of the mower). There is nothing identified within the disclosure of Sugden et al. that remedies this deficiency. Accordingly, the combination of Scag and Sugden et al. fails to teach or suggest all the recitations of claim 24 and, therefore, fails to render claim 24 obvious.

**Pre-Appeal Brief Request For Review**

Page 4 of 4

Serial No.: 10/798.616

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

For at least this reason, review and withdrawal of the obviousness rejection of claim 24 over Scag in view of Sugden et al. are requested.

**Summary**

For at least the foregoing reasons, Appellants respectfully request that the Panel review and reverse the final rejections of claims 14-24 in the above-identified application, and that a Panel Decision allowing the application on the existing claims be issued.

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Signature: *Sam S. Wight*Name: Sam S. Wight23 Feb. 2006  
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Respectfully submitted by

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